

*In the United States Court of Federal Claims*

In re:

COMPLAINT OF JUDICIAL MISCONDUCT

No. CL-11-900047

OPINION AND MEMORANDUM

The court received a complaint alleging that an attorney practicing in Oklahoma and a special master of the U.S. Court of Federal Claims have engaged in misconduct.<sup>1</sup>

Under the Rules for Judicial-Conduct and Judicial-Disability Proceedings (RJCP or Rules), attorneys are defined as “noncovered persons” against whom such complaints may not be filed. RJCP 4; RJCP 8(c). For this reason, the complaint with regard to the attorney practicing in Oklahoma is not cognizable, and pursuant to the Rules, the clerk of this court rejected the portions of the complaint regarding that individual. RJCP 8(c). The clerk accepted the complaint only with regard to the special master. RJCP 8(d).

The Judicial Conduct and Disability Act, codified as 28 U.S.C. §§ 351-64, and the RJCP allow for any individual to complain about a federal judge, magistrate, or special master the individual believes “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” RJCP 1. Under the Rules, the chief judge reviews complaints of judicial misconduct that are filed with the court and determines whether they should be dismissed or referred for further proceedings. RJCP 11(a).

The Rules provide that a complaint must be dismissed by the chief judge, without further review, if the chief judge concludes that the complaint:

- (A) alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in inability to discharge the duties of judicial office;
- (B) is directly related to the merits of a decision or procedural ruling;

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<sup>1</sup> The Rules for Judicial-Conduct and Judicial-Disability Proceedings require the court to issue a public opinion which describes the misconduct alleged and the basis of its decision. RJCP 24(a). However, the identity of the judge is protected if the complaint is finally dismissed under RJCP 11(c). RJCP 24(a)(1). The identity of the complainant is also protected. RJCP 24(a)(5). Accordingly, the court will not identify the parties in this matter, nor describe the context in which the complainant’s grievances arose with any degree of specificity.

- (C) is frivolous;
- (D) is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists;
- (E) is based on allegations which are incapable of being established through investigation;
- (F) has been filed in the wrong circuit under Rule 7; or
- (G) is otherwise not appropriate for consideration under the Act.

RJCP 11(c)(1).

Complainant first contends that the special master erroneously refused to admit expert testimony and evidence regarding her vaccine injury claim. Pursuant to RJCP 11(c)(1)(B), complaints directly related to the merits of a procedural ruling are not covered by these Rules, and must be dismissed.

Complainant also alleges that the special master and his family are involved in a conspiracy against complainant that has manifested itself over a number of years and a number of transactions in other states. This court finds that these allegations are facially incredible and lacking in indicia of reliability and must be dismissed as frivolous. RJCP 11(c)(1)(C).

IT IS ORDERED that the complaint made against the special master of the United States Court of Federal Claims is DISMISSED because the special master did not engage in conduct prejudicial to the administration of the business of the court, RJCP 3(h)(1). One allegation made by complainant is directly related to the merits of a procedural ruling made by the special master, RJCP 11(c)(1)(B), and the remainder of the allegations are frivolous. RJCP 11(c)(1)(C).

IT IS FURTHER ORDERED that the complainant has the right to file a petition for review of this decision by the entire court. The deadline for filing such a petition is within thirty-five (35) days of the date on the clerk of court's letter transmitting this Order. RJCP 11(g)(3), 18(b).



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EMILY C. HEWITT  
Chief Judge